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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/436,171	11/09/1999	ANDREAS BLECKMANN	BEIERSDORF59	6227

7590 12/13/2001

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EXAMINER

WELLS, LAUREN Q

ART UNIT

PAPER NUMBER

1619

DATE MAILED: 12/13/2001

12

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/436,171

Applicant(s)

BLECKMANN ET AL.

Examiner

Lauren Q Wells

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 November 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Claims 1-10 are pending. Claims 7-10 were added by the Amendment received May 1, 2001, Paper No. 7.

#### ***Response to Applicant's Arguments/Amendment***

The Applicant's arguments filed November 19, 2001 (Paper No. 11) to the rejection of claims 1-10 made by the Examiner under 35 USC 103 have been fully considered and deemed not persuasive.

#### ***103 Rejection Maintained***

The rejection of claims 1-10 under 35 U.S.C. 103(a) as being unpatentable over Schreiber et al. (WO 98/17232) in view of Lang et al. (4,976,952) in further view of Seidel et al. (5,830,483) is MAINTAINED for the reasons set forth in the Office Action mailed May 25, 2001, Paper No. 9, and those found below.

Applicant argues "Schreiber is directed to cosmetic sticks, which require a combination of an oil and a wax that is solid at room temperature. This is the antithesis of Applicants' low-viscosity liquid emulsions". This argument is not persuasive. First, the Examiner respectfully points out that Applicant's claims are open-ended, thus Applicant's composition claims can comprise components besides those explicitly stated, such as a wax. Second, the Examiner respectfully points out that the Applicant has not placed any limitations on the form or the viscosity of the instant composition.

Applicant argues "Lang. . . does not have anything to do with chitosan. Lang is concerned with the use of water soluble quaternary N-substituted chitosan derivatives". This argument is not persuasive. Claim 10 recites "wherein said at least one cationic polymer is

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chitosan". The examiner respectfully points out that chitosan is a polysaccharide that is not naturally cationic, but can be made cationic by chemical modifications, such as those disclosed in Lang.

Applicant argues "there is absolutely no reason why anyone would substitute Seidel's paraffin oil for Schreiber's liquid oil and solid wax". This argument is not persuasive. Paraffin oil is a hydrocarbon oil and Schreiber specifically teaches on page 12 of his specification that "the oil phase can advantageously be chosen from the group of branched and unbranched hydrocarbons. . .".

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on T-F (6-4:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana L Dudash can be reached on (703) 308-2328. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw  
December 5, 2001

A handwritten signature in black ink, appearing to read "D. Jones", with a stylized, cursive script.

**DAMERON L. JONES  
PRIMARY EXAMINER**